

BEFORE THE
ILLINOIS COMMERCE COMMISSION

Savatran, LLC; Hamilton County,) DOCKET NO.
Illinois; Eastern Township) T08-0083
(Franklin County), Illinois;)
Knight Prairie Township (Hamilton)
County), Illinois; and Village of)
Macedonia, Illinois,)
Petitioners,)
)
v.)
)
Illinois Department of)
Transportation; and Flannigan)
Township (Hamilton County),)
Illinois.)
Respondents.)
)
)
Petition for Permission to Open)
Grade Crossings of Public Highways)
and Streets with Railroad Tracks.)

Springfield, Illinois
Tuesday, July 21, 2009

Met, pursuant to notice, at 10:00 a.m.

BEFORE :

Mr. Joseph O'Brien, Administrative Law Judge

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter
CSR License #084-002710

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Commission)

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12 (Appearing on behalf of IDOT)

1		<u>I N D E X</u>			
2					
3	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
4	JOSEPH FARINELLI				
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PROCEEDINGS

JUDGE O'BRIEN: Pursuant to the authority vested in me by the Illinois Commerce Commission, I now call Case Number T08-0083, the petition of Savatran, LLC, Hamilton County, Illinois, Eastern Township of Franklin County, Illinois, Knight Prairie Township of Hamilton County, Illinois, and the Village of Macedonia, Illinois, versus the Illinois Department of Transportation and Flannigan Township, Hamilton County, Illinois.

Will the parties please enter their appearances?

MR. McFARLAND: Your Honor, Thomas F. McFarland, 208 South LaSalle Street, Chicago, Illinois, representing the petitioners.

MR. MATRISCH: Appearing on behalf of the Staff of the Illinois Commerce Commission, Steve Matrisch, 527 East Capitol Avenue, Springfield, Illinois 62701. My phone number is (217) 782-6447.

MR. JOHNSON: Your Honor, my name is Jason Johnson. I am here for IDOT, Bureau of Local Roads and Streets. I am a rail safety technician. My

1 address is 2300 South Dirksen Parkway, Room 205,
2 Springfield, Illinois. Zip is 62764, and the phone
3 number is (217) 557-1399.

4 JUDGE O'BRIEN: Are there any other
5 appearances? Let the record show none.

6 Let the record further show that a
7 previous hearing was held in this matter on November
8 the 18th of 2008. At the conclusion of that hearing
9 the matter was continued for submission of Staff
10 recommendations on the type of protection for these
11 crossings. Since then the scope of the hearing has
12 changed just a bit because of Staff recommendations
13 differing somewhat from what the petitioners had
14 requested with regard to crossing protection.

15 We also have a couple of motions, one
16 from Knight Township or Knight Prairie Township of
17 Hamilton County which is styled as a Petition to
18 Intervene, entry of appearance filed by James L. Van
19 Winkle on behalf of the township; and also a motion
20 to realign a party. The gist of the motion is that
21 the township is of the opinion that they had an
22 agreement with Savatran with regard to the type of

1 crossing protection to be provided at some of the
2 crossings in that township, and that Savatran is no
3 longer of the same opinion with regard to the type of
4 crossing protection required. So they have asked --
5 the motion asked that they be realigned as a
6 respondent rather than as a petitioner.

7 Is there anyone here today
8 representing the township?

9 MR. MATRISCH: Your Honor, if I may address
10 that issue, this morning I received a call from
11 Mr. Van Winkle who I believe is counsel representing
12 the Knight Prairie Township, and he represented to me
13 this morning that that party wished to withdraw its
14 petition to intervene and the motion to realign. I
15 indicated that I would convey that message to you
16 this morning and he indicated that no one from Knight
17 Prairie was going to attend the hearing this morning.

18 JUDGE O'BRIEN: So he and his client were aware
19 of the hearing?

20 MR. MATRISCH: They were, Your Honor.

21 JUDGE O'BRIEN: But chose not to appear and
22 have asked that their petition to intervene and

1 realign both be withdrawn, and I will allow that.

2 Since they no longer want to proceed, those issues
3 are moot then.

4 The scope of this proceeding covers, I
5 believe, still 13 crossings, is that correct?

6 MR. McFARLAND: It is, yes.

7 JUDGE O'BRIEN: Okay. Of those 13 crossings
8 how many and which ones are still at issue with
9 regard to the type of protection?

10 MR. McFARLAND: In that respect, Your Honor, I
11 assume you received a copy of a motion for leave to
12 amend the petition filed on June 16?

13 JUDGE O'BRIEN: Yes, I did, yes.

14 MR. McFARLAND: And that lists what the
15 petitioners believe would be appropriate warning
16 devices at those crossings. I gather that the Staff
17 disagrees with some or maybe even with all of those.
18 But I am not sure which ones they disagree with.

19 MR. MATRISCH: If I may, Your Honor? The
20 difficulty in this case for Staff all along has been
21 it appears as though Savatran is giving everyone a
22 moving target. In their original petition for the 13

1 crossings they were seeking flashing lights, gates
2 and signals for 11 of the 13. At the hearing they
3 reduced the number for flashing lights, signals and
4 gates. And then with the most recent motion to amend
5 paragraph 14 they are changing the warning devices at
6 even more of the crossings.

7 It is Staff's position and has been
8 Staff's position all along in this case that flashing
9 lights, signals and gates are required at 12 of the
10 13 crossings. The only crossing that Staff believes
11 cross bucks are an adequate warning device is Road
12 350 East. And I don't want to speak for Savatran,
13 but I believe Savatran is in agreement with Staff
14 that cross bucks are sufficient warning devices at
15 that crossing.

16 The other two -- there are two other
17 crossings, rather, that it appears Staff and Savatran
18 are in agreement on, those two being Illinois State
19 Highway 14 and Illinois State Highway 142. Savatran
20 has proposed and continues to propose automatic
21 flashing lights, signals and gates at both of those
22 crossings. And Staff -- it is Staff's position that

1 that is the proper warning device to be installed at
2 both of those crossings. The others, which I guess
3 would be ten, remain in dispute.

4 JUDGE O'BRIEN: So 6, 10 and 13 which are the
5 numbers given on page 2 of the original petition, 6
6 being Illinois State Highway 14, 10 being Road 350 E
7 and 13 being Illinois State Highway 142, are the
8 crossings on which both parties or all of the parties
9 basically agree, is that correct?

10 MR. McFARLAND: It is correct, yes.

11 JUDGE O'BRIEN: So the others, the other ten,
12 the parties are not in agreement on.

13 I have here the motion to amend
14 paragraph 14 of the original petition. Now, as I
15 read this petition, on page 2 Savatran is proposing
16 automatic flashing light signals at Road 1000 N,
17 Hamilton County Highway 7. Let's just go through
18 these. Winemiller Road, Savatran is proposing cross
19 bucks, is that correct?

20 MR. McFARLAND: Correct.

21 JUDGE O'BRIEN: And Staff is proposing what?

22 MR. MATRISCH: Staff is proposing automatic

1 flashing light signals and gates at all crossings
2 except 350 E.

3 JUDGE O'BRIEN: Okay. So Savatran is proposing
4 signals but not gates at six of those crossings that
5 are still in controversy and cross bucks at four.

6 MR. McFARLAND: No, five.

7 JUDGE O'BRIEN: Well, but we said that Staff is
8 in agreement with 350 E.

9 MR. McFARLAND: Yes, I am sorry.

10 JUDGE O'BRIEN: So I am talking about the ten
11 at which there is controversy.

12 MR. McFARLAND: That's correct.

13 JUDGE O'BRIEN: At which there is disagreement.

14 MR. McFARLAND: Yes.

15 JUDGE O'BRIEN: Okay. All right. Are we ready
16 to proceed with the evidence?

17 I will grant the motion to amend the
18 petition. I assume Staff -- I know you are not in
19 agreement with what they are proposing, but I will
20 grant the motion to amend the petition so that their
21 proposal becomes as of record. Like I say, that does
22 not presuppose that you are in agreement with the

1 amendment or what the amendment proposes.

2 MR. MATRISCH: Very well. Very good.

3 MR. McFARLAND: Then I would like to recall

4 Mr. Farinelli as our witness.

5 JUDGE O'BRIEN: Now, he has been previously

6 sworn...

7 MR. McFARLAND: He has.

8 JUDGE O'BRIEN: ..in this proceeding, is that

9 correct?

10 MR. McFARLAND: Yes.

11 JUDGE O'BRIEN: And, sir, you understand you

12 are still under oath from the original hearing?

13 THE WITNESS: Yes.

14 MR. McFARLAND: Can we leave him right here?

15 JUDGE O'BRIEN: That's fine.

16 MR. McFARLAND: I would like to have marked as

17 Savatran Exhibit 2 a single-page document that's

18 headed Illinois Collision Statistics for Public

19 At-Grade Crossings.

20 JUDGE O'BRIEN: The first exhibit is marked

21 Petitioner's 1. Now, do we want to -- if you want

22 this just to be a Savatran exhibit, it should

1 probably be Savatran 1, rather than Petitioner's
2 because we have multiple petitioners here.

3 MR. McFARLAND: I really don't care.

4 JUDGE O'BRIEN: Let's make it Savatran 1
5 because we still have the issue with the townships.

6 Does the reporter have a copy of this?

7 MR. McFARLAND: Yes, and this was sent to the
8 parties yesterday.

9 (Whereupon Savatran Exhibit 1
10 was marked for purposes of
11 identification as of this date.)

12 JOSEPH FARINELLI
13 recalled as a witness on behalf of Petitioner
14 Savatran, LLC, having been previously duly sworn, was
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. McFARLAND:

18 Q. Mr. Farinelli, I would ask you to refer to
19 the box at the bottom of the page second from the
20 right. And I ask you, does that show that at the end
21 of the year 2007 in the state of Illinois there were
22 8,284 public at-grade crossings?

1 A. That's correct.

2 Q. Does the chart at the far right side at the
3 bottom of the page show the types of warning devices
4 at those crossings?

5 A. Yes.

6 Q. Where it says "gates" in that chart, does
7 that mean that the crossings were protected only with
8 gates or does it mean that there were gates and
9 flashing lights both?

10 MR. MATRISCH: I am going to object, Your
11 Honor. I am not sure a proper foundation has been
12 laid that this witness is qualified to testify what
13 those terms in that chart mean. That's a Commission
14 chart. I don't believe it is Mr. Farinelli's chart.

15 MR. McFARLAND: Your Honor, I think he can
16 testify what his understanding of the exhibit is.

17 JUDGE O'BRIEN: Where did this information come
18 from?

19 MR. McFARLAND: It was from a -- Your Honor, it
20 came from an Illinois Commerce Commission
21 preliminary -- year-end preliminary study for 2007.
22 It was included in a document that was headed

1 Illinois Collision Statistics for Public At-grade
2 Crossings. I don't have the full copy of that
3 document with me today.

4 JUDGE O'BRIEN: Do you know how you acquired
5 this? Is this a public record?

6 MR. McFARLAND: It is. We acquired this over
7 the internet.

8 JUDGE O'BRIEN: I will overrule the objection
9 then, and you can delve into it on cross if there is
10 some disagreement with the way he understands these
11 different categories to be.

12 Proceed.

13 MR. McFARLAND:

14 Q. Okay. Was your answer, sir, that it is
15 gates only?

16 A. Gates and lights.

17 Q. Now, where it says "gates" in the far
18 right-hand corner, does that mean gates only or gates
19 and lights?

20 A. Gates and lights.

21 Q. What does AFLS stand for in that chart?

22 A. Automatic flashing light signal.

1 Q. Where it says "AFLS" or "other active" in
2 that chart, does that mean that the crossings were
3 protected only with automatic flashing lights or
4 other active means without gates?

5 A. Yes.

6 Q. Are both gates and automatic flashing
7 lights commonly considered to be active warning
8 devices?

9 A. Yes.

10 Q. Are cross bucks commonly considered to be
11 passive warning devices?

12 A. Yes.

13 Q. Where it says "other passive" in that
14 chart, does that usually refer to stop signs?

15 A. Yes, and/or yield signs.

16 Q. Based on that chart, at the end of 2007
17 what percentage of public crossings in Illinois were
18 protected with active and what were protected with
19 passive warning devices?

20 A. Sixty-one percent were protected with
21 active, 39 percent with passive warning devices.

22 Q. And did you determine that by a simple

1 mathematical calculation?

2 A. Yes.

3 Q. Does the chart at the far left side of the
4 bottom of that page show the percentage of collisions
5 at public crossings in Illinois during 2007, broken
6 down between crossings protected with passive and
7 active warning devices and further broken down by
8 whether the active warning device was a flashing
9 light or gate?

10 A. Yes, that's correct.

11 Q. Does that chart show that a
12 disproportionately high percentage of the collisions
13 occurred at crossings protected with active warning
14 devices?

15 MR. MATRISCH: Objection to the use of the word
16 "disproportionately."

17 JUDGE O'BRIEN: I will sustain that.

18 MR. McFARLAND: I will rephrase.

19 Q. What percentage of collisions occurred at
20 crossings protected by active warning devices and
21 what percentage occurred at the crossings protected
22 by passive warning devices?

1 A. Eighty-one percent of the collisions
2 occurred at crossings with active protection, yet
3 only 61 percent of the crossings had active warning
4 devices.

5 Q. And in connection with active warning
6 devices, does the chart show what percentage of
7 collisions occurred at the active warning devices
8 protected by gates only versus flashing lights?

9 A. Yes. That particular chart, that boxed in
10 chart in the lower left, shows 56 percent were
11 protected by gates, 25 percent were protected with
12 flashing lights.

13 Q. Does the chart that's the second from the
14 left at the bottom of the page show the same
15 information that the chart on the far left shows,
16 except that it shows percentages of fatalities from
17 collisions, rather than collisions only?

18 A. That's correct.

19 Q. Is the information shown in that chart
20 consistent in your opinion with the information shown
21 in the chart at the far left of the page?

22 A. Yes, only it is even more skewed.

1 Eighty-nine percent of the fatalities occurred at
2 crossings with active protection, yet only 61 percent
3 of these crossings had active warning devices.

4 MR. McFARLAND: Your Honor, at this point I
5 would like to have marked -- this will be Savatran
6 Exhibit 2 then, a two-page document. The first page
7 is headed Illinois Rail Crossings by Warning Device.
8 And I should say that this information came from a
9 multi-page document headed Illinois Railroad Safety
10 Education and Enforcement Initiatives by Steve
11 Laffey, L-A-F-F-E-Y, railroad safety specialist,
12 Illinois Commerce Commission, and it was presented at
13 an IDOT/ICC annual meeting on April 20, 2005, in
14 Madison, Illinois.

15 (Whereupon Savatran Exhibit 2
16 was marked for purposes of
17 identification as of this date.)

18 BY MR. McFARLAND:

19 Q. Referring to the first page, Mr. Farinelli,
20 is the information limited to public crossings?

21 A. Yes.

22 Q. As of what date is that information shown?

1 A. 2005.

2 Q. What percentage of the crossings were
3 protected by active warning devices and what were
4 protected by passive warning devices?

5 A. Fifty-eight percent were protected by
6 active, 42 percent by passive means.

7 Q. And how did you determine those that were
8 protected by active?

9 A. The pie chart shown on page 1 of that
10 exhibit shows that gates and flashing lights were
11 used on 32 percent of the crossings, flashing lights
12 on 26. The sum of those is 58. The remaining cross
13 buck stop signs or none other sum to 42 which is the
14 total of the passive.

15 Q. Okay. Referring to the second page of
16 Exhibit 3, what percentage of the collisions shown
17 between 1999 and 2003 occurred at crossings protected
18 by active and what percentage occurred at crossings
19 protected by passive warning devices or crossings not
20 protected at all?

21 A. Seventy-four percent of the collisions
22 between the years 1999 and 2003 occurred at crossings

1 with active protection as opposed to 26 percent of
2 the collisions during this same time period occurred
3 at crossings with passive protection.

4 Q. How did you determine that 74 percent
5 number?

6 A. Again, that was the sum of the individual
7 pie segments for the active portions and the passive
8 portions.

9 Q. Okay. Was it the total of AFLS
10 cantilevered, AFLS mast-mounted, gates, and gates
11 with cantilever AFLS?

12 A. Yes, and it is also -- that sum is also
13 consistent with the 74 percent active in the title of
14 the chart.

15 Q. Okay. What is the relationship shown on
16 that page between the collisions that occurred at
17 crossings protected by gates or gates and lights
18 compared to crossings not protected by gates?

19 A. I am not sure what you mean.

20 Q. Sure. Rather than ask you whether or not
21 there is a disproportion, I ask you whether or not
22 more than twice as many collisions occurred at

1 crossings protected by gates or gates and lights
2 compared to crossings not protected by gates?

3 MR. MATRISCH: Objection, leading.

4 A. No.

5 MR. MATRISCH: Leading.

6 JUDGE O'BRIEN: Okay. Let's clear one thing
7 up. Is there such a thing in your opinion as a gated
8 crossing without lights? I mean, we keep hearing
9 gates -- you know, gates, and gates and flashing
10 lights. Are all gated crossings also protected with
11 flashing lights?

12 THE WITNESS: Are you asking me, Your Honor?

13 JUDGE O'BRIEN: I am asking are you aware.

14 THE WITNESS: I believe, my understanding, that
15 gates are in addition to.

16 JUDGE O'BRIEN: So when you refer to gated
17 crossings, rather than saying crossings with gates
18 and crossings with gates and flashing lights, that
19 that's one and the same thing. The crossings with
20 gates all have flashing lights. And so with regard
21 to active protective devices, you have gated
22 crossings, you have flashing light crossings without

1 gates and then you have passive protection, basically
2 three main categories.

3 THE WITNESS: Yes.

4 JUDGE O'BRIEN: Is that correct?

5 THE WITNESS: Yes.

6 JUDGE O'BRIEN: Just so we keep this -- so
7 someone reading the transcript could get the
8 impression that there is actually four different
9 categories. We have some with gates and no lights,
10 we have some with gates and lights, and we have some
11 with lights and no gates, and in fact we do have
12 those, and then we have passive protection. So there
13 is really three main types, gates, flashing lights
14 and the difference -- I know there are different
15 types of flashing lights -- but the main difference
16 is we do have some flashing lights with no gates but
17 we don't have gates with no flashing lights.

18 Okay. So rephrase your question so as
19 not to make it a leading question.

20 MR. McFARLAND: I think I will just withdraw
21 that question.

22 JUDGE O'BRIEN: Okay.

1 BY MR. McFARLAND:

2 Q. Is the information shown in Savatran
3 Exhibit 2 for the period between 1999 and 2003 in
4 your opinion consistent with the information shown in
5 Savatran Exhibit 1 for the year 2007?

6 A. Yes. It certainly does not appear to be an
7 anomaly. That's been the case for several years.

8 Q. Are you familiar with any study for any
9 other period of time that shows information that is
10 not consistent with the information shown in Savatran
11 Exhibits 1 and 2?

12 A. No.

13 MR. McFARLAND: Your Honor, at this point I
14 would like to have marked as Savatran Exhibit 3 a
15 series of photographs.

16 (Whereupon Savatran Exhibit 3
17 was marked for purposes of
18 identification as of this date.)

19 BY MR. McFARLAND:

20 Q. Referring to Savatran Exhibit 3,
21 Mr. Farinelli, did you take these photographs and, if
22 so, when did you take them?

1 A. Yes, I took those photographs on 11 March
2 2009.

3 Q. Okay. Referring to the Macedonia Road
4 crossing, I take it that the first four photographs
5 are photographs of the proposed location of the
6 crossing in Macedonia Road looking in the four
7 directions, north, south, east and west?

8 A. Yes.

9 Q. In your opinion what do the photographs of
10 Macedonia Road crossing show in regard to the ability
11 of a motorist nearing the crossing to see an
12 approaching train?

13 A. The visibility of a motorist approaching
14 this crossing is excellent.

15 Q. What is the angle of the proposed railroad
16 crossing of Macedonia Road?

17 A. Forty-five degrees.

18 Q. Is the information regarding the type of
19 crossing surface and the average daily vehicular
20 traffic for that crossing shown in the petition
21 itself?

22 A. Yes. We have used the county's estimate of

1 the average daily traffic on these roads. We feel
2 they are extremely conservative, but nonetheless they
3 are sufficiently low that we are not going to argue
4 about it.

5 Q. Referring now to the next series of
6 photographs of Winemiller Road, this would be pages 5
7 through 8 of Savatran Exhibit 3, do they show the
8 proposed location of the crossing of Winemiller Road
9 looking north, south, east and west?

10 A. Yes.

11 Q. In your opinion what do the photographs of
12 the proposed Winemiller Road crossing show in regard
13 to the ability of a motorist nearing the crossing to
14 see an approaching train?

15 A. Again, the visibility of a motorist
16 approaching this crossing from the north to the south
17 is excellent.

18 Q. What is the angle of the proposed railroad
19 crossing at Winemiller Road?

20 A. Just a little over 90 degrees, 93 degrees.

21 Q. Does the Winemiller Road have a gravel
22 surface at the location of the proposed railroad

1 crossing?

2 A. Yes.

3 Q. And the average daily vehicular traffic for
4 Winemiller Road is shown in the petition, is it not?

5 A. Yes, it is.

6 Q. I would ask you to refer to the next series
7 of photographs from Savatran Exhibit 3. This would
8 be pages 9 through 12, and ask you whether that shows
9 the proposed location of the crossing of Road 200 E
10 looking north, south, east and west?

11 A. Yes.

12 Q. And in your opinion what do the photographs
13 of the proposed Road 200 E crossing show in regard to
14 the ability of a motorist nearing the crossing to see
15 an approaching train?

16 A. Again, in this case, this case is slightly
17 different in the fact that the motorist is running
18 parallel with the track approaching from the south.
19 But his visibility is excellent.

20 Q. What's the angle of the proposed railroad
21 crossing of Road 200 E?

22 A. Forty-five, approximately 45 degrees.

1 Q. Is Road 200 E a dirt road at the point at
2 which it is proposed to be crossed by the railroad?

3 A. Yes. It is not only a dirt road, it's a
4 very poorly maintained single lane dirt road.

5 Q. Has the Knight Prairie Township Highway
6 Commission or highway district agreed with Savatran
7 that cross bucks would be adequate warning for the
8 proposed crossing of Road 200 E?

9 MR. MATRISCH: Objection, hearsay.

10 JUDGE O'BRIEN: Sustained.

11 Q. Referring now to the last series of
12 crossings which would be Savatran Exhibit 3, pages 13
13 through 16, I ask you whether they show the location
14 of the proposed crossing at Road 400 E, looking
15 north, south, east and west?

16 A. Yes.

17 Q. And in your opinion what do the photographs
18 show in regard to the ability of a motorist
19 approaching that crossing and the ability to see an
20 approaching train?

21 A. Visibility along the road is excellent.
22 There are some trees to the west that obstruct some

1 peripheral vision.

2 Q. What's the proposed angle of the crossing
3 at Road 400 E?

4 A. Approximately 92 degrees.

5 Q. Is Road 400 E a gravel road at the point at
6 which it is proposed to be crossed by the tracks?

7 A. Yes.

8 Q. What are the speed limits, the vehicular
9 speed limits, on Winemiller Road, Macedonia Road,
10 Road 200 E and Road 400 E?

11 A. These are non-posted county roads, but
12 having driven them almost on a daily basis, at
13 Winemiller Road we have got a maximum speed of about
14 30 miles an hour, on 200 East no more than 20 miles
15 an hour, at 400 East and Macedonia Road about 40
16 miles an hour.

17 Q. In light of the information shown in the
18 petition and in the photographs, what type of warning
19 devices does Savatran propose and on what basis at
20 Winemiller Road, Macedonia Road, Road 200 E and Road
21 400 E?

22 A. At Winemiller Road cross bucks only,

1 Macedonia Road cross bucks only, at 200 East cross
2 bucks and a yield sign, and likewise at 400 East
3 cross bucks and a yield sign.

4 Q. If the Commission were of the opinion that
5 any of those crossings, those four crossings, should
6 be protected with active warning devices, what type
7 of active warning device would Savatran propose and
8 on what basis?

9 A. Flashing lights, since there is not an
10 increased level of protection afforded by the
11 addition of gates to a crossing already protected by
12 flashing lights.

13 Q. Now, referring to the crossings at which
14 Savatran formerly proposed automatic flashing lights
15 and gates and now proposes automatic flashing lights
16 only, would you identify those crossings?

17 A. It would be 600 East, 1400 North, 300 East,
18 1375, Dahlgren, Highway 7, Miller Road. Some of
19 these roads have several names. I think that's
20 consistent with how they were described in the
21 petition.

22 Q. Okay. And Savatran originally proposed

1 automatic flashing lights and gates, and now proposes
2 automatic flashing lights only; and I would like to
3 have you explain the basis for that change.

4 A. I think a lot of it had to do with a
5 review, a legal review, of the statistics that seemed
6 to question -- seemed to call into question the
7 notion that we are in fact actually providing a
8 higher level of protection. The statistics that we
9 just went through doesn't support that conclusion.

10 MR. McFARLAND: Your Honor, that concludes my
11 questioning of Mr. Farinelli. I would offer Savatran
12 Exhibit 2, 3 and 4 into the record.

13 JUDGE O'BRIEN: I will withhold ruling on that
14 until after cross.

15 CROSS EXAMINATION

16 BY MR. MATRISCH:

17 Q. Mr. Farinelli, I would like to take you
18 back to November 18, 2008, when you previously
19 testified in this case. Do you recall that?

20 A. I might be a little fuzzy. I have not read
21 the transcript in awhile.

22 Q. You testified at that time that you have a

1 bachelor's and master's degree in mining engineering,
2 is that correct?

3 A. That's correct.

4 Q. Do you have any education in road design?

5 A. No, sir.

6 Q. How about railroad crossing design?

7 A. Just on the project. I am responsible for
8 the construction and installation of this particular
9 15-mile rail spur.

10 Q. So your experience with respect to railroad
11 crossing design is limited to your job duties as they
12 relate to this 15-mile stretch through what we are
13 talking about today?

14 A. That's correct.

15 Q. Sort of like on-the-job training then,
16 correct?

17 A. Yes.

18 Q. Are you a statistician by trade?

19 A. No.

20 Q. You previously testified last year that the
21 speed limit for Macedonia Road, Winemiller Road, 200
22 East and 400 were all 55 miles an hour. Do you

1 remember that testimony?

2 A. I remember testifying that since they were
3 unposted county roads, that by Illinois law I believe
4 the speed limit is assumed to be 55.

5 Q. So a vehicle traveling on any of those four
6 roads that I just listed could legally travel 55
7 miles an hour, isn't that correct?

8 A. Could legally travel 55. Couldn't
9 practically travel 55.

10 Q. Do you have any teenage children?

11 A. Yes. As a matter of fact, all three of my
12 children are in the army.

13 Q. You brought some photos today for 200 E,
14 400, Macedonia and Winemiller. Are there any photos
15 for the crossing that you described at the end of
16 your testimony today or have you changed your
17 position from automatic flashing lights, signals and
18 gates to just flashing signals?

19 A. No, I did not bring pictures for those
20 crossings.

21 Q. Did you take pictures?

22 A. No, I didn't.

1 Q. If I could draw your attention to the
2 photos that you took for Macedonia Road, if you could
3 pull those out for me, please. I believe you
4 testified that you were there on March 11 of this
5 year, is that correct?

6 A. That's correct.

7 Q. It appears from looking at these photos
8 that on either side of the roadway, I am not a
9 farmer, but it looks like grass to me, a grassy field
10 to me, would you agree with that?

11 A. Yes.

12 Q. Is that grass growing on March 11, 2009?

13 A. There is grass there. I don't know whether
14 it's -- how growing it is.

15 Q. The grass is not green, though, you would
16 agree with me, right?

17 A. That's right.

18 Q. Have you been down to the Macedonia Road
19 recently?

20 A. Yes.

21 Q. Is the grass green?

22 A. Yes.

1 Q. So the grass is growing on either side of
2 the pavement today, correct?

3 A. Yes.

4 Q. The photo that is labeled Macedonia Road
5 looking north, do you see that?

6 A. Yes.

7 Q. At the top of the or the middle of the
8 picture, rather, the road is at an incline. Would
9 you agree with that?

10 A. Yes.

11 Q. If you are driving Macedonia Road from the
12 south headed north, would you agree or disagree with
13 me that on the east side of the road before you come
14 to the crossing there is an agricultural field?

15 A. Yes.

16 Q. And, in fact, last year that agricultural
17 field had corn in it, did it not?

18 A. No, I don't believe the field on the east
19 side did.

20 Q. But that field has had corn in the past?

21 A. I believe that's in the CWP program and
22 it's been in that program for several years now.

1 Q. But corn could be planted in that field,
2 correct?

3 A. I don't believe corn has been planted in
4 the field to the east for many years. I think if you
5 look at --

6 Q. I am sorry, let me interrupt. What is CWP?

7 A. Maybe I used the wrong acronym, the program
8 by which the state pays the farmer not to farm that
9 field.

10 Q. I would like you to look at the photo that
11 you have labeled Macedonia Road looking south. To
12 the left side of the roadway which would be east,
13 would be east of that roadway, there appears to be an
14 agricultural field to me. Would you agree or
15 disagree with that?

16 A. On the -- I am sorry. On the east side of
17 the road or the west side of the road are you talking
18 about now?

19 Q. The east side, sir.

20 A. The east side. Which quadrant?

21 Q. The southeast quadrant.

22 A. The southeast quadrant, no, that's the

1 quadrant that I have been referring to that I don't
2 believe there is any --

3 MR. MATRISCH: Your Honor, may I approach the
4 witness?

5 JUDGE O'BRIEN: Proceed.

6 BY MR. MATRISCH:

7 Q. I am showing you a document that's been
8 previously labeled, I believe that was Savatran 3,
9 labeled Macedonia Road looking south. The area that
10 I am referring to is this area right here.

11 A. East, that would be the southeast quadrant
12 and that's the area that I am saying has not been
13 planted in quite some time.

14 Q. What would you describe as quite some time?

15 A. Based on the aerial photo, I would put it
16 at several years. And with the drainage and
17 topography in that particular quadrant, it is
18 doubtful that it has ever been a very productive
19 plot.

20 Q. When were those aerial photos taken?

21 A. This particular aerial photo, I can't tell
22 you when the photo itself was actually taken.

1 Q. So that photo may have been taken ten years
2 ago, correct?

3 A. No, I don't think it could have been taken
4 that long ago.

5 Q. Could it have been taken five years ago?

6 A. Possibly five.

7 Q. And there could have been corn in that
8 field last fall, correct?

9 A. Could have been.

10 Q. That photo would not reflect that, is that
11 correct?

12 A. That's true.

13 Q. I would next like to draw your attention to
14 the photos for Winemiller, if you would grab those
15 and take a look at those for me, please. Do you have
16 those?

17 A. Yes.

18 Q. Looking at the photo that is described as
19 Winemiller -- or, I am sorry, labeled as Winemiller
20 Road looking north, this photo was taken at the
21 approximate location where the crossing will be
22 located, is that correct?

1 A. That's correct.

2 Q. So if a vehicle was traveling south to the
3 left of the vehicle, to the east of the vehicle,
4 right before you get to the crossing there is an area
5 with trees and brush and what is generally just
6 overgrown. Would you agree with that? And I want
7 you to look at your photos which your counsel marked
8 as an exhibit.

9 A. Could you refer -- it would be easier for
10 me to understand your question if you would say, hey,
11 along the east side of the road or along the west
12 side of the road. I can follow that.

13 Q. Okay. Well, on the east side of the road.

14 A. I agree, and that is property that is owned
15 by Savatran.

16 Q. When you were there in March were there any
17 leaves on those trees?

18 A. No.

19 Q. Do you suppose there is leaves on those
20 trees today?

21 A. Certainly.

22 Q. I want you to take a look at the photo for

1 Winemiller that is labeled Winemiller Road looking
2 west. Do you have that?

3 A. Yes.

4 Q. That's corn stubble in that field, isn't
5 it?

6 A. Yes.

7 Q. So as early as last fall corn was growing
8 in that field, isn't that correct?

9 A. That's correct.

10 Q. Would the corn in that field affect the
11 motorist's visibility approaching that crossing?

12 A. That would be speculation, but we have a
13 200-foot wide easement all along the tracks to the
14 west and we own the property to the east.

15 Q. So a motorist traveling north on Winemiller
16 when there is corn in that field, their sight would
17 be obstructed by that corn until 200 feet before the
18 crossing?

19 A. No.

20 Q. How long before you get to the crossing?

21 A. I couldn't say.

22 Q. At 55 miles an hour, correct?

1 A. You will not drive 55 along that road.

2 Q. The speed limit is 55 miles an hour legally
3 along Winemiller Road, is it not?

4 MR. MCFARLAND: Objection, argumentative.

5 JUDGE O'BRIEN: Well, he has already stated in
6 his opinion, although that is a legal speed limit, it
7 is not practical to drive that type of speed because
8 of the surface of that particular road.

9 Go ahead. Proceed.

10 BY MR. MATRISCH:

11 Q. I would next like to draw your attention to
12 the photos for 200 East, please. Do you have those?

13 A. Yes, I do.

14 Q. The view that's 200 east looking north?

15 A. Yes.

16 Q. I believe you testified that that is a dirt
17 road?

18 A. Yes, I would call that a muddy rutted dirt
19 road.

20 Q. You would agree with me that is gravel on
21 that road, would you not?

22 A. A smattering of gravel.

1 Q. Does Savatran plan to do any sort of grade
2 work when this crossing is put in at the location of
3 this crossing?

4 A. Yes, there is some relocation of the road
5 south of the tracks.

6 Q. Okay. So north of the tracks would
7 essentially -- the configuration of the road is going
8 to essentially remain the same?

9 A. Yes.

10 Q. Is that fair to say?

11 A. Yes.

12 Q. And where the photo looking north was
13 taken, that is the location of the proposed crossing?

14 A. Yes, all these photos were taken on the
15 center line of the rail.

16 Q. You would agree with me, would you not,
17 that the road at the location of the crossing is
18 sunken from the surrounding area?

19 A. Slightly, yes.

20 Q. Do you think that affects visibility of a
21 motorist at all?

22 A. Partially.

1 Q. Do you know whether there is a trucking
2 company located nearby the proposed crossing on 200
3 East?

4 A. A trucking company?

5 Q. Uh-huh.

6 A. Huh-uh, I couldn't tell you.

7 Q. Not sure where?

8 Next I would like to draw your
9 attention to the photos with respect to 400 East.
10 And, again, when you were there in March there were
11 no leaves on the trees, correct?

12 A. That's correct.

13 Q. Would you agree with me that the photos for
14 400 East show on several of the views trees right up
15 to the edge of the roadway?

16 A. That's correct.

17 Q. And it is your testimony today that
18 visibility along the road of 400 East is excellent?

19 A. Visibility along the road, your ability to
20 see a crossing signal well over 600 feet to the north
21 and south along the road.

22 Q. But not your ability to see the train.

1 Would you agree that your ability to see a train --

2 A. Is going to be impaired.

3 Q. Let me finish my question. It is going to

4 be impaired. Okay, thank you.

5 With respect to the proposed warning

6 devices at these four roads, I just want to make sure

7 that I am clear what Savatran is proposing. At

8 Winemiller, you are proposing cross buck signs only,

9 correct?

10 A. That's correct.

11 Q. Macedonia Road you are proposing cross buck

12 signs only, is that correct?

13 A. Yes.

14 Q. At 200 East and 400 East you are proposing

15 cross bucks in conjunction with yield signs for both

16 of those crossings, is that correct?

17 A. Yes.

18 Q. Would you agree or disagree with me that

19 Macedonia is a more heavily traveled road than is 200

20 East?

21 A. I would agree.

22 Q. Yet you are not proposing yield signs for

1 that crossing, correct?

2 A. No.

3 Q. Would you agree that Winemiller is a more
4 heavily traveled road than is 200 East?

5 A. Slightly.

6 Q. Do you know what the collision statistics
7 have been for any year other than 2007?

8 A. No.

9 Q. In Illinois?

10 A. Well, other than my familiarity with the
11 years 1999 to 2003.

12 Q. Just so I understand your testimony
13 correctly, is it your position that more crashes,
14 more vehicular train accidents, happen at crossings
15 where active warning devices are located than passive
16 warning devices?

17 A. What I am saying is I don't think that's in
18 dispute. What is in dispute is the disproportionate
19 number of collisions that occur at crossings with
20 active protection.

21 Q. So you think more crossings happen at
22 crossings with active warning devices than those with

1 passive warning devices, correct?

2 A. More, yes, more collisions do occur at
3 crossings with active protection. But part of that
4 is due to the fact that, if I can use the 2007
5 statistics, roughly 60 percent of all crossings in
6 Illinois have active protection. Yet, roughly 80
7 percent of collisions occur at these crossings. So
8 there appears to be a disproportionate number of
9 accidents occurring at crossings that have active
10 protection.

11 Q. And do you base that conclusion or did you
12 factor in exposure rate at the crossing at all in
13 reaching that conclusion?

14 A. I am not sure what you mean by exposure.
15 As far as the daily traffic and things like that? Or
16 when you say exposure, I am not quite sure what you
17 mean.

18 Q. Are you aware -- have you ever heard of a
19 company or a business called White Oak Resources?

20 A. Yes.

21 Q. And what is White Oak Resources, if you
22 know?

1 A. As far as I know it's a mining company
2 based in McLeansboro that is looking to open a coal
3 mine north of McLeansboro.

4 Q. And are you aware that a coal mine will be
5 located at the north end of the 400 East Road?

6 A. No, I am not aware of that.

7 MR. MATRISCH: If I could have just a second,
8 Your Honor.

9 (Pause.)

10 MR. MATRISCH: That's all I have. Thank you,
11 Mr. Farinelli.

12 MR. McFARLAND: Just one or two.

13 REDIRECT EXAMINATION

14 BY MR. McFARLAND:

15 Q. Mr. Farinelli, I would like to have you
16 clarify the ownership of Savatran and the easement
17 rights of Savatran at the proposed Winemiller
18 crossing.

19 A. At the Winemiller crossing, I can kind of
20 break it up. We own the -- first off, west of
21 Winemiller Road, that's the easy part, west of
22 Winemiller Road we have a 200-foot wide right-of-way,

1 a hundred foot north of the track, a hundred foot
2 south of the track. As this -- the road and the
3 track, break it up into four quadrants, from --
4 that's on the west side of the road, I am sorry. And
5 on the east side of the road the entire southeast
6 quadrant and approximately 120 feet north of the
7 track into the northeast quadrant is all controlled
8 by Savatran.

9 Q. When you say controlled, what are you --

10 A. Owned out right.

11 Q. If there were obstructions on any of the
12 land owned by Savatran, Savatran would have the
13 ability to remove the obstructions, would it not?

14 A. Yes.

15 Q. And would they do so?

16 A. Absolutely.

17 Q. By the same token, if any of the -- there
18 were any obstructions in the easement of the part
19 east of the road there, would Savatran be able to
20 remove those obstructions?

21 A. Yes.

22 Q. And would they do so?

1 A. Yes.

2 MR. McFARLAND: That's all I have, Your Honor.

3 MR. MATRISCH: Just one quick follow-up, if you
4 don't mind, Your Honor.

5 RECROSS EXAMINATION

6 BY MR. MATRISCH:

7 Q. So Savatran would not have the ability to
8 remove any obstruction 101 foot away from the center
9 line of the track on the west side of that road?

10 A. It's more than a hundred. That track is
11 angling to the south and it's more than a hundred
12 feet.

13 Q. You indicated that you had a hundred foot
14 right-of-way on either side of the center line of the
15 track.

16 A. And the track is dipping -- the track dips
17 to the southeast gradually.

18 Q. When you say dips, you mean it skews from
19 the track?

20 A. Yes.

21 Q. From the crossing?

22 A. Yes.

1 Q. But Savatran wouldn't have the ability to
2 have a farmer remove his corn that's lawfully in that
3 field, would they?

4 A. Are you west of the road or east of the
5 road?

6 Q. I am west of the road, sir.

7 A. West of the road, no.

8 MR. MATRISCH: Thank you. That's all I have.

9 MR. McFARLAND: Your Honor, I renew my motion
10 to submit into evidence Savatran Exhibits 2, 3 and 4
11 -- I mean, 1, 2 and 3, I am sorry.

12 JUDGE O'BRIEN: Any objection?

13 MR. MATRISCH: I have no objection to the
14 photos, Your Honor. I apologize. I am not sure, I
15 think that's Savatran Exhibit 3.

16 JUDGE O'BRIEN: That's three.

17 MR. MATRISCH: I have no objection to those. I
18 will renew my objection as to Savatran Exhibit 1 and
19 Savatran Exhibit 2. I don't believe there is a
20 proper foundation. And, secondly, I believe that
21 those documents are only a part of a larger document.
22 And if that's going to be entered into an exhibit, I

1 believe the entire thing should be entered into an
2 exhibit. But I don't believe a proper foundation has
3 been laid nevertheless.

4 JUDGE O'BRIEN: I will admit those three
5 exhibits, Savatran 1, 2 and 3.

6 (Whereupon Savatran Exhibits 1,
7 2 and 3 were admitted into
8 evidence.)

9 EXAMINATION

10 BY JUDGE O'BRIEN:

11 Q. Would you agree, sir, that to come up with
12 an absolutely total accurate statistical analysis of
13 collisions -- forget about fatalities, we are just
14 talking about collisions -- you would have to know
15 several other factors other than just there are X
16 number of crossings that have X number of accidents,
17 other factors being traffic count?

18 A. Yes.

19 Q. And would you expect that for the most part
20 if you analyzed traffic count, that you would find
21 that crossings which are protected by gates and/or
22 flashing lights only would in general have much

1 higher traffic counts than crossings that are
2 unprotected or that have basically passive
3 protection?

4 A. Yes. And I guess that's precisely why we
5 objected to, I guess, the blanket coverage and the
6 ICC's initial ruling that the same level of
7 protection be provided on a road with an average
8 count of 20 and a road with an average daily count of
9 2,000. So that's in the ICC's initial ruling,
10 blanket ruling, that blindly said that flashing
11 lights and gates will be applied at all these
12 crossings. They apparently totally disregarded the
13 average daily traffic.

14 Q. First of all, first of all, there has been
15 no ruling in this case. This is a Staff
16 recommendation. The Commission has never seen this
17 case, as of yet. So what you are in disagreement
18 with is Staff's recommendation as to the level of
19 protection, okay.

20 Now, refresh my memory. How many
21 trains a day are going to use this approximate
22 15-mile line?

1 A. The most we can envision, and that is based
2 on we are in the business of coal mining and that
3 nature is kind of a step function, we have submitted
4 the most we could envision producing would require
5 about five loaded and five empty trains a day. And
6 that would be something we could hopefully, hopefully
7 will achieve over the next -- ramp up over the next
8 five or six years.

9 Q. And would these operations be both during
10 daylight and night hours?

11 A. Yes.

12 JUDGE O'BRIEN: That's all I have, thank you.

13 Do you want to take a short recess?
14 You are going to present Mr. Von De Bur, is that
15 correct?

16 MR. MATRISCH: Yeah, it should be fairly brief.

17 JUDGE O'BRIEN: I don't think you have been
18 sworn.

19 THE WITNESS: I have not been sworn.

20 (Whereupon the witness was duly
21 sworn by Judge O'Brien.)

22 JUDGE O'BRIEN: Proceed.

1 MR. MATRISCH: Thank you, Your Honor.

2 JOSEPH J. VON DE BUR

3 called as a witness on behalf of Staff of the
4 Illinois Commerce Commission, having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MATRISCH:

8 Q. Could you please state your name for the
9 record and spell your last name.

10 A. Joseph J. Von De Bur, that's capital V-O-N,
11 capital D-E, capital B-U-R.

12 Q. By whom are you employed, Mr. Von De Bur?

13 A. I am employed by the Illinois Commerce
14 Commission of the State of Illinois.

15 Q. And would you give us your business
16 address, please?

17 A. My address is 527 East Capitol Avenue,
18 Springfield, Illinois 62701.

19 Q. And please describe briefly your
20 educational background.

21 A. I have a bachelor's of science in civil
22 engineering from the University of Illinois.

1 Q. And what is your position with the Illinois
2 Commerce Commission?

3 A. I am a railroad safety specialist.

4 Q. And as a railroad safety specialist would
5 you briefly describe what your duties entail?

6 A. For the most part my duties are to
7 facilitate rail safety projects within the state of
8 Illinois which consists of evaluating existing or new
9 or proposed crossings. And we do that -- normally I
10 do that personally and bring those recommendations to
11 my superior. I can also arrange for diagnostic
12 reviews to be done by parties of record in a docket
13 issue. I also prepare information for and testify at
14 formal and informal Commission public proceedings, as
15 an expert witness concerning highway rail crossings.
16 I handle highway rail crossing complaints, and I am a
17 liaison with IEMA which consists of being a duty
18 officer accepting accident reports.

19 Q. Accidents as they relate to railroad
20 crossing accidents?

21 A. That's correct.

22 Q. How long have you been a railroad safety

1 specialist at the ICC?

2 A. Since April of 1997.

3 Q. And briefly before working at the ICC where
4 were you employed?

5 A. I have been employed by the Capitol
6 Development Board and three private consultants.

7 Q. As an engineer?

8 A. That is correct.

9 Q. As part of your job duties at the ICC do
10 you review proposals for new grade crossings in the
11 state and make recommendations as to the warning
12 devices at those crossings?

13 A. Yes, I do.

14 Q. And when you have reviewed proposals for
15 those new grade crossings, what's your primary
16 emphasis?

17 A. Safety is our primary emphasis.

18 Q. And have you reviewed the petition filed by
19 Savatran in this case?

20 A. Yes, I have.

21 Q. And in the petition filed by Savatran how
22 many crossings are being proposed?

1 A. Savatran proposes establishing 13 new
2 crossings at public roads.

3 Q. And with respect to the 13 crossings being
4 proposed did you conduct a diagnostic review for each
5 crossing location?

6 A. Yes, I did.

7 Q. And what is a diagnostic review?

8 A. A diagnostic review consists of a
9 collection of data regarding the physical
10 characteristics of where that crossing is or in this
11 case where that crossing might be. I then take that
12 data and confer with my superiors to determine
13 appropriate warning devices.

14 Q. And was a diagnostic review done for the 13
15 proposed crossings in this case?

16 A. Yes, it was.

17 Q. Who else was present when this diagnostic
18 review was done?

19 A. Present at that were Joe Farinelli, Rod
20 Bergeron who is a rail safety specialist with the
21 Illinois Commerce Commission, Jason Johnson, rail
22 safety technician with IDOT, James Morris, agreement

1 engineer with IDOT, Greg McLaughlin, IDOT District 9,
2 David Barger of IDOT District 9, Michael Rolla,
3 Franklin County engineer representing Eastern
4 Township and Kevin Phillips, Hamilton County engineer
5 representing Franklin and Knight Prairie townships.

6 Q. And of the 13 crossings that are being
7 proposed, are there any crossings that you believe
8 need to be protected only with cross buck signs?

9 A. We believe that the crossing at Road 350
10 East, because of its low traffic count and sporadic
11 use, could justifiably receive the installation of
12 cross bucks with yields.

13 Q. Is that essentially a dead end road?

14 A. Yes, sir, it is.

15 Q. I am going to draw your attention to the
16 proposed crossing on Macedonia Road. Savatran is
17 proposing just cross bucks on this proposed crossing,
18 is that correct?

19 A. That's correct.

20 Q. Have you personally visited the site of
21 that proposed crossing?

22 A. I personally visited the site of each of

1 these crossings during the diagnostic review.

2 Q. Could you describe for us the conditions of
3 the road and surrounding area adjacent to the
4 proposed crossing on Macedonia Road?

5 A. The roadway is a rural roadway located in a
6 residential agricultural area. It's a two-lane,
7 two-way north/south -- it's an oil and chip road at
8 this point.

9 Q. What types of vehicles are likely to go
10 across the crossing that's being proposed?

11 A. Passenger vehicles will, of course, use
12 that. You can also expect agricultural and farm
13 equipment. You can possibly expect school buses,
14 although school bus routes change every year. We
15 anticipate every crossing has the potential for
16 school bus traffic. Since it is an agricultural
17 area, we would expect hazardous materials in the form
18 of ammonia, fertilizer, basically, or propane fuel.
19 And we always expect that there could be emergency
20 response vehicles using those roadways.

21 Q. And you have seen some photos today of the
22 Macedonia Road crossing, but based on your personal

1 knowledge of the road would you describe for us what
2 you saw when you were there that day?

3 A. All of the road crossings are located in
4 rural areas. There is sporadic timber, the location
5 of sporadic timber throughout those areas. Some of
6 them have agricultural fields adjacent to them. So
7 there could be crops in those areas. The majority of
8 them did contain timber.

9 Q. The Macedonia Road crossing, is that
10 crossing skewed at all?

11 A. That crossing is -- the proposed angle is
12 46 degrees.

13 Q. What's the effect of a skewed crossing on
14 -- well, what's the effect of a skewed crossing when
15 it crosses a railroad?

16 A. The skewed crossing actually increases the
17 sight distance that a motorist would need if it were
18 to observe a train.

19 Q. Why is that?

20 A. Because in the acute angle quadrant of
21 those crossings, the motorist has to actually turn
22 their head and look, possibly look back, to establish

1 whether or not there is oncoming traffic.

2 Q. What's the average daily traffic estimate
3 for the Macedonia Road at the location of the
4 proposed crossing?

5 A. I was given an average daily traffic of 150
6 vehicles per day at a maximum of 55 miles per hour
7 legally.

8 Q. And that 150 ADT estimate came from
9 Savatran itself, is that correct?

10 A. That came from the original petition as
11 well as -- well, I am sorry, strike that. That came
12 from the original petition, yes.

13 Q. And based on your experience here at the
14 Commission, your observations at the Macedonia Road
15 crossing, what is your recommendation as to the
16 warning device that's needed to be installed at the
17 Macedonia Road crossing?

18 A. Because this crossing is a new crossing and
19 it presents a new hazard to the motoring public, we
20 recommend automatic flashing lights and gates.

21 Q. Okay. I would like to next draw your
22 attention to the proposed crossing at Winemiller

1 Road. Did you personally visit the site of that
2 crossing?

3 A. Yes, I did.

4 Q. And would you describe for us the
5 conditions of the road and the surrounding area
6 adjacent to the proposed crossing?

7 A. Again, Winemiller Road is a rural
8 residential agricultural area. It is a two-lane
9 two-way north/south roadway, a narrow roadway with a
10 compacted stone surface.

11 Q. And to the west of the roadway is there an
12 agricultural field?

13 A. I cannot say for certain. But based on the
14 photos that I have, yes.

15 Q. What's the average daily traffic estimate
16 for Winemiller Road?

17 A. We were given an ADT of 75 vehicles per day
18 at 55 miles per hour.

19 Q. What types of vehicles would likely
20 traverse this crossing?

21 A. We expect the traffic types to be the same
22 on all the crossings which would be passenger

1 vehicles, agricultural and farm equipment, possibly
2 school buses and intermittently hazardous materials
3 such as ammonia and propane, and also the emergency
4 response vehicles.

5 Q. Do you have a recommendation as to the
6 warning device that is required or that is needed,
7 rather, at the Winemiller Road crossing?

8 A. Staff's recommendation is that automatic
9 flashing lights and gates be installed at that
10 crossing.

11 Q. Okay. I would like to next draw your
12 attention to the proposed crossing at 200 East. I
13 believe you testified earlier that you personally
14 visited this proposed -- the site of this proposed
15 crossing?

16 A. Yes, I did.

17 Q. Describe for us, if you would, the
18 conditions of the road and the surrounding area
19 adjacent to that proposed crossing.

20 A. It is a residential and agricultural area,
21 and we were told at the time we did the survey that
22 the area that would be in the southwest quadrant is a

1 conservation area of some sort.

2 Q. What effect does that have on your
3 recommendation?

4 A. I believe natural conservation areas you
5 are not allowed to alter the existing flora and
6 fauna.

7 Q. So the vegetation is allowed to grow?

8 A. That's correct.

9 Q. And would the same types of vehicles likely
10 go across this crossing that you have previously
11 described, school buses, agricultural farm machinery
12 and hazardous materials, that sort of thing?

13 A. Yes, sir. We were also informed that at
14 this particular crossing that there was an adjacent
15 land owner who requested that that crossing remain
16 there so he could be allowed to haul trucks across
17 that.

18 Q. Directly south of the proposed crossing on
19 200 East is there a horizontal curve south of that
20 crossing and, if so, what effect does that have on
21 motorists?

22 A. South of the crossing there is an acute

1 horizontal curve. It's a 90 degree turn where
2 traffic approaches from the west and turns to the
3 north towards the crossing.

4 Q. And what effect would that horizontal curve
5 have on the recommendation that you are making?

6 A. That horizontal curve severely limits the
7 visibility of a driver approaching the crossing.

8 Q. From which direction?

9 A. From the west.

10 Q. And then they would head north on 200 East,
11 is that correct?

12 A. That's correct.

13 Q. With respect to the proposed crossing on
14 200 East, what is your recommendation as to the
15 warning device that should be installed there?

16 A. Because of the limited visibility and the
17 type of traffic that would use that road, we
18 recommend that automatic flashing lights and gates be
19 installed on that road crossing.

20 Q. And drawing your attention to 400 North --
21 I am sorry, it is 400 East, did you personally visit
22 the site of that crossing, railroad crossing rather?

1 A. Yes, I did.

2 Q. And describe for us the conditions of the
3 road and the surrounding area that are adjacent to
4 the proposed crossing?

5 A. Once again, that is a rural residential
6 agricultural area. The roadway is a two-lane two-way
7 narrow roadway of pack and fill.

8 Q. What about trees and shrubbery, that sort
9 of thing, in that location?

10 A. Here at 400 East the terrain is pretty
11 rough in that area and there is heavy tree cover.

12 Q. And when you were there were there leaves
13 on the trees?

14 A. Yes, there were. I beg your pardon, let me
15 correct that. We were there in December of 2008.
16 There were no leaves on the trees.

17 Q. And would you anticipate visibility to be
18 reduced, for example, this time of year when the
19 leaves are -- trees are leafed out?

20 A. Absolutely.

21 Q. The speed limit on 400 is 55 miles an hour
22 as well?

1 A. The speed limit is not posted. The legal
2 speed limit is 55 miles an hour with 100 vehicles a
3 day.

4 Q. And what is your recommendation as to the
5 warning device that the Commission should order at
6 the proposed crossing on 400?

7 A. It is Staff's recommendation that automatic
8 flashing lights, signals and gates be installed.

9 MR. MATRISCH: Your Honor, I am going to mark
10 this as Staff Exhibit 1.

11 (Whereupon Staff Exhibit 1 was
12 marked for purposes of
13 identification as of this date.)

14 BY MR. MATRISCH:

15 Q. Mr. Von De Bur, I show you what I have
16 previously marked as Staff Exhibit 1 and ask you if
17 you recognize that document.

18 A. Yes, I do.

19 Q. What is it?

20 A. It is a statistical analysis done by Steve
21 Laffey of our staff in regards to accidents and
22 exposure rates.

1 Q. You heard Mr. Farinelli testify this
2 morning about some exhibits relating to a 2007 year
3 end preliminary summary study. What does Staff
4 Exhibit 1 tell us?

5 MR. McFARLAND: Your Honor, I object to that
6 question. There doesn't seem to be any relationship
7 from this exhibit to the exhibits that Mr. Farinelli
8 testified about. And the source of this document is
9 not clear.

10 MR. MATRISCH: With all due respect, Your
11 Honor, that is sort of the pot calling the kettle
12 black in relationship to --

13 JUDGE O'BRIEN: Hold on. Is this from the same
14 study that --

15 MR. MATRISCH: It is not, Your Honor. These
16 are statistics.

17 JUDGE O'BRIEN: It is a different one?

18 MR. MATRISCH: No, these are statistics that
19 Staff keeps that are current as of today.

20 JUDGE O'BRIEN: I will overrule the objection.
21 Proceed.

22 BY MR. MATRISCH:

1 Q. Well, let me see if I can narrow my
2 questions down a little better. Mr. Von De Bur, at
3 the top of this exhibit there are two columns. One
4 is labeled Exposure and one is labeled Percent
5 Exposure. Do you see those?

6 A. Yes, I do.

7 Q. At the bottom of the first area there is a
8 subcategory called Subtotal Gates. Do you see that?

9 A. Yes, I do.

10 Q. Describe for us or explain for us what
11 those two numbers represent, namely the Exposure and
12 Percent Exposure numbers?

13 A. Exposure is the product of the number of
14 trains per day and the number of vehicles per day at
15 a particular crossing. The number of Subtotal Gates
16 gives the number of exposures for the four types of
17 active warning devices shown in column one.

18 Q. So based on these statistics is it true
19 that 92.6 percent of the vehicles crossing grade
20 crossings in the state of Illinois, those crossings
21 are protected by active warning devices?

22 A. That is actually 92.6 percent of the

1 exposures, correct.

2 Q. Drawing your attention to the area called
3 Cross bucks, about two-thirds to three-quarters of
4 the way down, explain for us what the numbers in the
5 Exposure and the Percent Exposure columns, what do
6 those numbers tell us?

7 A. The Exposure gives you the total number of
8 trains, the product of the total of number of trains
9 and total number of vehicles crossing at cross buck
10 crossings within the state of Illinois on a daily
11 basis.

12 Q. So the .9 percent indicates that less than
13 one percent of all vehicles -- well, what does .9
14 percent tell us?

15 A. .9 percent represents that portion of
16 exposures, of all exposures in Illinois. So the
17 product of the trains and the vehicles at cross buck
18 crossings represents less than one percent of the
19 product of trains and vehicles at all crossings in
20 Illinois.

21 Q. Has the number of crossings in the state of
22 Illinois that are protected by just cross bucks gone

1 up or gone down in the past ten years?

2 A. Could you restate that? I am sorry.

3 Q. Sure. Has the number of crossings,
4 at-grade crossings in the state of Illinois, that are
5 protected by cross bucks only gone up or gone down in
6 the past ten years?

7 A. From 1998 to 2007 the number of cross buck
8 crossings has been reduced by 38 percent in the state
9 of Illinois.

10 Q. And why is that?

11 A. The Commerce Commission through the use of
12 the Grade Crossing Protection Fund is actively
13 involved in installing or aggressively involved in
14 installing active warning devices at all crossings in
15 Illinois.

16 Q. And has the number of crossings that are
17 protected with gates in the state of Illinois gone up
18 or gone down in the past ten years?

19 A. The percentage of crossings, the number and
20 percentage of crossings protected by gates, has
21 increased by 34 percent over the past few years.

22 Q. With respect to the crossings that Savatran

1 is now proposing just have flashing lights at them
2 and not gates, what is your position with respect to
3 those crossings?

4 A. We no longer recommend the installation of
5 only flashing lights at crossings in Illinois. We
6 recommend that all crossings have gates. While they
7 can be circumvented, they cannot be as easily
8 circumvented as merely going over a crossing with
9 flashing lights.

10 Q. And, finally, it is your recommendation,
11 Mr. Von De Bur, that of the 13 crossings that
12 Savatran is proposing in this case, 12 of those be
13 protected with automatic flashing lights, signals and
14 gates; and the only one, namely Road 350 E, that be
15 protected -- 350 East is the only road that you are
16 recommending be protected with cross bucks only, is
17 that correct?

18 A. That's correct.

19 MR. MATRISCH: That's all I have, Your Honor.
20 I would move for admission of Staff Exhibit 1.

21 JUDGE O'BRIEN: I will withhold ruling until
22 after cross. Proceed with cross.

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CROSS EXAMINATION

4

BY MR. McFARLAND:

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Q. Mr. Von De Bur, what again was the date of your diagnostic review of these crossings?

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A. The diagnostic review was conducted on December 9, 2008.

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Q. I ask you to refer to your notes and I ask you whether or not the conservation area that you are talking about actually is adjacent to Road 400 East rather than 200 East?

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A. 200 East is where there was a large area of I guess what can be referred to as natural grass. We asked about that area and what was going to be done. We were told that that was a conservation area.

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Q. Let me refer you to Staff Exhibit 1 and ask you about some of these headings. What does AADT stand for?

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A. That is the average annual daily traffic count based on an extended traffic count. But it breaks down into the expected number of vehicles per

1 day on average.

2 Q. Okay. And that's all types of vehicular
3 traffic, is it?

4 A. Yes, it is.

5 Q. And in order to get the exposure figure,
6 not the percentage of exposure but the exposure
7 figure, do you multiply that number by the number of
8 trains?

9 A. That is correct.

10 Q. So this exhibit takes into account the
11 relative number of vehicles that -- the vehicular
12 traffic that goes across a particular crossing, does
13 it not?

14 A. Yes, sir.

15 Q. If you gave the average daily traffic at
16 200 East, I missed that number during your direct
17 testimony. Do you have that number?

18 A. Just one moment, please. We show the
19 average daily traffic count at 200 East to be 25
20 vehicles per day.

21 Q. Have you gone back to these crossings to
22 take a look at their conditions during summer as

1 opposed to December?

2 A. I have seen these crossings in probably
3 three different seasons. I have not been back since
4 December 9.

5 Q. Okay. What year did you graduate from the
6 University of Illinois?

7 A. I graduated from the U of I in 1990.

8 Q. Explain for me again how the exposure
9 number in Staff Exhibit 1 is derived. What do you
10 multiply or add? How do you get that number?

11 A. Exposure is the product of the average
12 daily traffic and the number of trains. So that
13 would be you multiply the number of vehicles times
14 the number of trains.

15 Q. You are saying that if we multiply, for the
16 first entry under four quad gates, if we multiply
17 731,425 by 4,040, you should get 45,148,349?

18 A. That I can't say for sure. Mr. Laffey is
19 the one that prepared this exhibit. I can bring him
20 down here, if you would like.

21 Q. I think this record should show how that
22 number was determined. Why don't you pass that for a

1 minute and let me go to this column to the right
2 where it says FRA-CPV. What does that mean?

3 A. That is the US DOT collision prediction
4 value. It is a process the US DOT uses to evaluate
5 crossings based on possible collisions.

6 Q. What are the significance -- let's take the
7 first one, four quad gates, what is the significance,
8 if any, of that number 4.055?

9 A. I can only assume that that is the sum of
10 all the collision prediction values for four-quad
11 gated crossings.

12 MR. McFARLAND: Your Honor, that's all the
13 questions I have.

14 MR. MATRISCH: I have no redirect.

15 EXAMINATION

16 BY JUDGE O'BRIEN:

17 Q. Well, basically, Mr. Von De Bur, what you
18 are saying Staff Exhibit Number 1 shows is that
19 roughly 92 percent of vehicles that cross a railroad
20 crossing each day cross a crossing that is protected
21 by gates?

22 A. Ninety-two percent of the exposures, and an

1 exposure representing one train, one car.

2 Q. Because I am having a little trouble with
3 the math here, trying to figure out, for example, the
4 45 million figure for four-quad gates. It doesn't
5 square to multiply 4,000 times 731,000. It doesn't
6 seem to, at least.

7 MR. MATRISCH: I would agree. I am not sure
8 where these numbers have come -- how these numbers --

9 Q. Well, okay, but my question is basically
10 are we saying that about 92 percent of every vehicle
11 that crosses a crossing each day is crossing a
12 crossing with gates or are we saying that you have to
13 factor in the number of trains on that particular
14 line?

15 A. You have to factor in the number of trains.

16 Q. So actually something less than 92 percent
17 of all the cars that cross railroad tracks every day
18 or vehicles, even though they are not all cars, but
19 let's just say all, but something less than 92
20 percent of all the vehicles cross crossings that are
21 protected by gates?

22 A. If you will refer to Column 5, it gives the

1 percent of ADT.

2 Q. Okay. So about 64 percent of motor
3 vehicles that cross a crossing each day cross a
4 crossing that is protected by gates?

5 A. That is correct.

6 Q. About 28 percent are protected by another
7 type of active warning device. And around a total of
8 seven percent, almost eight percent, are driving
9 across crossings that are passively protected?

10 A. That is correct.

11 Q. Now, when you went to the area to visit the
12 proposed crossing locations, how did you get there?

13 A. We had to be directed to the location of
14 each crossing by a representative of Savatran.

15 Q. Okay. But physically how did you get
16 there? Did you drive?

17 A. We drove there.

18 Q. While you were driving up to these
19 crossings, how fast did you drive?

20 A. Because we were traveling in a convoy, it
21 was relatively slow.

22 Q. You have heard the witness's testimony that

1 practically you could not drive 55 miles an hour.

2 Maybe you could do it, but a reasonable or reasonably
3 prudent driver, what in your opinion would be a speed
4 that would be reasonably prudent in this area?

5 A. On any of these crossings, I would say a
6 reasonably prudent speed would be 30 miles an hour.

7 Q. For a couple of them, maybe less, because
8 that one looks like it is in pretty bad shape, there
9 is water laying in the mud?

10 A. That's right.

11 Q. Staff counsel referred to a little bit of
12 gravel, but if you look back up, there is a lot of
13 water and mud. And if you happen to hit that at 55
14 miles an hour, you are probably not going to cross
15 the crossing because you are probably going to be out
16 in the field somewhere.

17 A. Correct.

18 JUDGE O'BRIEN: Anything else?

19 MR. McFARLAND: Nothing else. May we go off
20 the record and discuss post hearing?

21 MR. JOHNSON: Your Honor, I would like to make
22 a brief statement of IDOT's position.

1 JUDGE O'BRIEN: Okay. Let me deal with the
2 staff exhibit. Staff Exhibit 1 has been moved for
3 admission.

4 MR. McFARLAND: I have no objection, except to
5 the Exposure and Percent Exposure, because the
6 numbers as explained don't appear to be
7 substantiated.

8 JUDGE O'BRIEN: Well, I will take that
9 objection under advisement with whatever use the
10 Commission may wish to make of this exhibit. I will
11 admit the exhibit.

12 (Whereupon Staff Exhibit 1 was
13 admitted into evidence.)

14 Mr. Johnson?

15 MR. JOHNSON: Yes, Your Honor. On behalf of
16 IDOT I would like to state that IDOT's position is
17 the same as Staff's and we would like to adopt
18 Staff's position argument as IDOT's. And that is,
19 out of the 13 locations, we recommend or request
20 automatic flashing lights, signals and gates at all
21 -- well, at all 13, except for Road 350 East where we
22 would agree that cross bucks would be sufficient.

1 And part of the reason we believe that
2 this is true, that flashing lights and gates should
3 be at the 12 locations, is because we feel that there
4 are sight distance problems at the locations, and
5 sight distance problems, particularly the four at
6 issue here today in the hearing, warrant the lights
7 and gates.

8 We feel like you only have to refer to
9 Savatran's Exhibit Number 1 where Mr. Farinelli
10 offered testimony regarding percentage of collisions
11 and the types, if you look right in the middle of
12 that Exhibit 1, you can see that there is a reduction
13 in vehicle fatalities and a reduction in injuries in
14 2007 versus 2006. We believe that this is a snapshot
15 of the recent trend in the last few years in a
16 reduction of fatalities and injuries. We feel that
17 this is a direct result of the ICC's policy of
18 replacing cross bucks -- not only cross bucks with
19 flashing lights and gates but also replacing flashing
20 light signals with newer flashing light signals and
21 gates. We feel that these reductions are a result of
22 that policy.

1 And then finally we would like to add
2 that in looking at these locations, we would ask that
3 Your Honor consider the motorist expectations at
4 these new crossings as compared to crossings that we
5 basically inherit and have to deal with. These are
6 locations that are brand new. Motorists are going to
7 be completely puzzled by the train traffic. And if
8 these locations are going to host up to ten trains a
9 day, we feel that cross bucks would mislead
10 motorists' expectations into thinking that trains are
11 very seldom at the crossings. So because of that,
12 too, we would consider the lights and gates be
13 warranted.

14 I think that's all I have.

15 JUDGE O'BRIEN: Anything further before we go
16 off the record? Okay. Off the record.

17 (Whereupon there was then had an
18 off-the-record discussion.)

19 JUDGE O'BRIEN: Back on the record then. Let
20 the record show we have had an off-the-record
21 discussion concerning a post-hearing briefing
22 schedule and have agreed that the petitioners'

1 initial brief will be due on August 31, Staff reply
2 brief due on September 30, and petitioners' reply
3 brief due on October 13. Let the record show then
4 this case continued to October 21 at 10:00 a.m. in
5 Springfield. Like I said, the understanding will be
6 no one will appear that day.

7 (Whereupon the hearing in this
8 matter was continued until
9 October 21, 2009, at 10:00 a.m.
10 in Springfield, Illinois.)

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